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In re Application of  
WALLUKAT, et al.

U.S. Application No.: 09/868,967

PCT No.: PCT/DE99/04112

Int. Filing Date: 22 December 1999

Priority Date: 24 December 1998

Attorney Docket No.: 101195-52

For: PEPTIDES AND THE AT RECEPTOR AND  
THEIR USE FOR PREECLAMPSIA AND  
MALIGN HYPERTENSION

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw a Holding of Abandonment" filed 05 February 2004 in the United States Patent and Trademark Office (USPTO). The petition is being treated as a petition under 37 CFR 1.181. No petition fee is due.

### **BACKGROUND**

On 25 July 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International Application number and international filing date, as well as an English translation of the international application. In addition, applicant was advised of the need to pay the surcharge for providing an oath or declaration of the inventor later than thirty months from the priority date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 24 September 2001, applicant filed an appropriate response.

On 18 January 2002, applicant filed a sequence listing for the present application.

On 22 November 2002, applicant was mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that a compliant sequence listing was still required. Applicant was afforded one month to file an appropriate response.

On 24 December 2002, applicant filed an additional sequence listing.

On 05 December 2003, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) acknowledging the reply of 24 December 2002 and notifying applicant that above-identified application was abandoned as to the United States.

On 05 February 2004, applicant filed the present petition to withdraw the holding of abandonment.

### **DISCUSSION**

Applicant seeks withdrawal of the holding of abandonment in the present application based on the filing of 24 December 2002. The USPTO does not dispute that applicant filed a timely response on 24 December 2002. This filing was received on 24 December 2002 with a certification that the filing was deposited for mailing on 19 December 2002. However, the sequence listing filed on that date did not comply with 37 CFR 1.821-1.825. As the time period for responding to the originally mailed form PCT/DO/EO/905 and subsequent forms PCT/DO/EO/916 had expired with a compliant CRF still outstanding, thus the application was held abandoned.

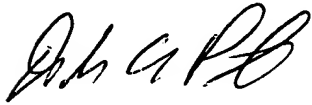
However, a review of the application file finds that the Form PCT/DO/EO/905 mailed 25 July 2001 did not indicate that a sequence listing was needed. The first indication that applicant was required to file a compliant sequence listing was the Form PCT/DO/EO/916 (Notification of a Defective Response) mailed 07 December 2001. As such, applicant was never afforded a proper period of response, namely two months extendable pursuant to 37 CFR 1.136(a). Therefore, applicant's petition to withdraw the holding of abandonment is granted. Further review of the application file finds that the most recently filed CRF and sequence listing may be lacking as to a particular sequence which appears in claims 3 and 5. (See attached OIPE Routing Sheet). Therefore, this application will be forwarded to the United States Designated/Elected Office (US/DO/EO) for processing and mailing of a new Form PCT/DO/EO/905.

### **CONCLUSION**

Applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment for the present national stage application is **GRANTED**.

The "Notification of Abandonment" mailed 05 December 2003 is hereby **VACATED**.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration of the inventors is required.

A handwritten signature in black ink, appearing to read 'Derek A. Putonen'.

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Attach: OIPE Routing Sheet re: CRF